STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-795

June 26, 1998

BANGOR GAS COMPANY
Petition for Approval
to Provide Gas Service
in the Greater Bangor Area

ORDER APPROVING
RATE PLAN

WELCH, Chairman; NUGENT and HUNT, Commissioners

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I. SUMMARY OF DECISION

We approve Bangor Gas Company's proposed rate plan with an earnings sharing mechanism subject to the modifications described herein.

II. OVERVIEW

Bangor Gas Company (BGC or Bangor Gas) has submitted a plan that will allow it, as a start-up natural gas utility, to begin operating quickly in a highly competitive market. The Company's plan allows it to develop a system that is especially capital-intensive in the first few years because it is designed to reach large and small customers in nearly the same time frame. The Company is also proposing to build its system early (beginning in June 1998) in order to coordinate with, and take advantage of, local public works road improvements. Because these investments will not yield compensatory revenues for several years, Bangor Gas has requested a rate plan with a long term within which it may gradually recover the front-end loaded costs of its system development. Bangor Gas asserts that it must convince its investors that the revenues it has projected over the term of the plan will remain stable, so the plan seeks to minimize Commission involvement in rates for a 10-year period. In essence, the plan purports to allocate the risk of poor performance, and the potential for high returns, to Bangor Gas.

In the overall structure of the plan, Bangor Gas will be able to reduce its prices virtually at will, but will not be permitted to increase prices beyond the cap levels. This structure provides both the flexibility needed to meet competition while ensuring that Bangor Gas cannot "gouge" its customers if, for example, oil prices rise dramatically and disproportionately to the cost of gas. The plan also allows unbundled service for all customer classes at the non-gas indexed rate.

There are however, a number of areas within Bangor's plan that require careful attention. The 10-year length of the plan proposed by Bangor Gas and the commensurate lack of Commission involvement in rate setting, along with the proposed language limiting Commission modifications to rates, are unprecedented in Maine. With respect to the amount of downside risk borne by Bangor Gas shareholders, neither the original proposal nor the modified earnings sharing proposal put forth by BGC guarantees that shareholders will bear all the risk of poor financial performance. As pointed out by the Public Advocate's witness Mr.

Rubin, BGC's representation that it bears all the risk of poor performance cannot be guaranteed:

> Given the provisions in Maine's public utility statutes that permit utilities to request emergency rate relief, I am certain that if events during the decade go against BGC it will seek redress from the Commission.

We do not find Bangor Gas's contention that it would accept all downside risk of loss[1] to be an adequate offset to unmitigated high end returns. Consequently, we adopt BGC's alternative earnings sharing proposal both to ensure that profits do not become unreasonable and to balance the equities. We also impose annual reporting requirements which will allow us to monitor the performance of the utility and to remedy matters which affect the public interest. Finally, we conclude that the necessary statutory provisions of recently enacted 35-A M.R.S.A. § 4706(6) provide adequate earnings protection for Bangor Gas.

III. DESCRIPTION OF THE ORIGINAL AND MODIFIED PRICE CAP PLANS

Bangor Gas has proposed a Multi-Year Rate Cap Plan (the Plan) that allows BGC the flexibility to price its product within certain constraints for a period of ten years. The Plan establishes maximum price cap rates which form the basis for the maximum rates the Company may charge in each year of the Plan. The Plan allows BGC the flexibility to change its rates or rate elements so long as the rates charged do not exceed the maximum price cap rates proposed for each class. In response to questions from the Advisory Staff and the Office of Public Advocate (OPA), Bangor Gas has also proposed an alternative plan that includes an earnings sharing provision.

A. Initial Proposal

Bangor Gas's originally filed price cap proposal is based on the year 2000 estimated cost of heating oil for residential, commercial, and industrial customers.[2] BGC's estimate of year 2000 natural gas cost at its city gate is

[1]The Commission is obligated under Maine's statutory scheme to balance and protect the interests of ratepayers and shareholders. This might be interpreted as requiring the Commission to provide rate relief to a utility that is threatened with financial dissolution.

[2]Heating oil price estimates for the year 2000 were derived by taking the 1994 through 1996 average cost of oil for each group of customers, and then escalating the price by a combination of NYMEX heating oil futures and GDP-PI deflators.

subtracted from the estimated oil price to derive an "initial competitive rate" for all non-gas related costs. The initial competitive rate is then increased by 5% to establish a non-gas Price Cap Rate. Monthly customer charges are based on Bangor Gas's estimate of the annualized cost of the investment to hook up a customer, plus the costs of meter reading, billing and collection. Customers in all classes will be provided the option of selecting sales or transportation only service from Bangor Gas. Customers who elect to receive sales service will pay an additional amount for gas delivered to the Company's city gate based on a cost of gas calculated and adjusted periodically in accord with Maine law and Commission Rule Chapter 430.

On October 1st of each year beginning in the year 2000, Bangor Gas will file a proposed Price Cap Rate Adjustment to be processed by the Commission in time to establish revised Price Cap Rates and actual rates by the following January 1. The adjustment to the price cap rate is made to account for inflation and is based on a Gross Domestic Product - Price Index (GDP-PI) price index; after a period of five years,[3] the formula will also include a .5 percent productivity offset adjustment.

The Plan allows Bangor Gas the flexibility to implement changes in its rate elements subject to certain constraints. Individual rate elements may be adjusted upwards in excess of the newly calculated rate caps so long as other rate element caps are adjusted to prevent the total class revenues from exceeding what would result from an across the board application of the escalation factor. Under no circumstances may the rate element adjustments result in interclass subsidization: increases below the Price Cap Rate increase to a rate element of one customer class may not be compensated for by higher than average increases in rate elements applicable to other customer classes. Finally, no individual rate element cap may be increased by more than 10% or by the percentage increase in the overall price cap, whichever is greater.

B. <u>Alternative Proposal</u>

Bangor Gas has proposed an alternative earnings sharing feature to its initial rate plan. Under the alternative proposal, Bangor Gas would establish and maintain an interest bearing "Earnings Account." If the Company's return on equity is below 15% in any calendar year, the dollar value of the shortfall would be debited to the earnings account. If the Company's ROE exceeds 15%, the excess would be credited to the account. Bangor Gas will file its entries to the account annually at calendar year end. When the filing demonstrates zero or negative (i.e.

[3] Beginning in January 2005, five years and two months from the expected start of service.

debit) balances, no rate adjustments will be made. The Company proposes that if the filing demonstrates a positive (i.e. a credit) balance, the next Price Cap Rate adjustment will be adjusted downward to effect a 50/50 sharing, and the earnings account balance will be reset to zero retroactive to December 31 of the year prior to the year in which the rate adjustment is made. The adjustment will be implemented by determining the value of the 50% share and imputing that dollar value into the base revenue levels of each customer class on an across-the-board basis.

IV. POSITIONS OF THE PARTIES

A. Bangor Gas Company

Bangor Gas asserts that its Multi-Year Rate Cap Plan is an appropriate ratemaking approach for a start-up utility. According to the Company, its plan provides rates which are: (1) comparable to those charged customers of other gas utilities in Maine and neighboring states; (2) competitive with the cost of alternative fuels; and (3) predictable.

According to Bangor Gas, the length of the Plan, the pricing flexibility it allows, and its reliance on competitive, rather than cost-of-service, pricing are necessary. Bangor Gas intends to construct its system in a manner which will allow it to serve all strata of customers in a relatively short period of time. As a result, much of the system development and capital investment will occur in the first two years of the Company's existence, and BGC will experience negative or low returns in the early years. Adequate positive returns are not expected for a number of years as BGC will be a new competitor in markets with entrenched providers who have solid customer bases. Capturing new customers from these providers and increasing system throughput is expected to take time, so the goal of BGC's Plan is to achieve an acceptable return on equity over the 10-year term of the Plan. Traditional cost-of-service pricing would likely result in industrial and commercial customers' being served quickly while residential customers would only receive service after a longer period of time. Bangor Gas maintains that its proposal is a reasonable methodology for setting the rates of a start-up utility because the Plan contains ratepayer protections, meets the public policy objectives of facilitating gas system development in Maine, and provides near term service to residential, as well as larger, customers.

To achieve positive returns and compete effectively, Bangor Gas also asks that it be allowed a high degree of flexibility in setting its prices. The Company believes adequate customer protections exist because the Plan only allows BGC flexibility to price at or below the multi-year rate cap. Moreover, the existence of the cap itself prevents the Company from taking advantage of disproportionate increases in oil prices by limiting increases in non-gas delivery prices.

B. Office of Public Advocate

The OPA criticizes BGC's Plan and urges the Commission to reject it. According to the OPA, it is unnecessary to adopt rates this far in advance of the in-service date (November 1999). Moreover, the OPA argues the rates resulting from the proposed BGC plan would be unjust and unreasonable.

The OPA contends that an annual inflation-adjusted price cap is inappropriate because the Company has failed to provide a rationale upon which to base such an adjustment for a local distribution company (LDC), and has not shown that the non-gas costs of a distribution utility increase with the rate of inflation. As evidence to the contrary, OPA notes that Maine's only existing LDC has not filed for an increase in rates since 1982.

According to OPA, a 10-year rate plan is too long for a start-up utility. OPA cites the Commission's approval of the 5-year term of Central Maine Power Company's (CMP) Alternative Rate Plan (ARP) with provisions for certain safeguards to protect against the unknown, as well as its rejection of NYNEX's requested 10-year Alternative Form of Rates (AFOR) because of uncertainty surrounding Congressional action and the appropriate productivity offset. The OPA also calls into question the issue of whether the Commission has the authority to prevent itself from revisiting the rates for a 10-year period should the public interest call for it. OPA contends that BGC is asking the Commission to guarantee excessive non-cost-based rates up to ten years in the future. In the OPA's view this would be poor public policy.

The OPA raises intergenerational equity arguments as part of its basis for opposing the BGC rate plan. According to OPA, the Plan requires ratepayers who are customers in the latter years of the plan to subsidize ratepayers who are customers in the early years. Because customers in the latter years of the plan may pay rates that yield returns in excess of what OPA considers reasonable annual returns on equity, OPA argues those rates are not just and reasonable. In the OPA's view, these latter day customers are paying rates to cover costs that existed at an earlier point in time which should more properly have been paid by customers to whom the costs could be attributed (i.e. receiving service at that earlier time).

OPA also opposes the degree of rate design flexibility afforded the Company by the rate plan. In particular, the OPA expresses concern that customers who are generally unfamiliar with rate design will be confused by having customer and volumetric distribution charges on their bill. BGC could capitalize on this confusion by arbitrarily raising the customer charge while maintaining lower-than-average volumetric charges. By doing this, BGC could forestall rational market decisions to reconvert to oil. OPA urges the Commission to order that customer charges remain tied to costs, and that other rate design changes proposed by the Company be reviewed in adjudicatory proceedings with opportunities for interested parties to participate.

The Bangor Gas Company proposal to use oil prices as a benchmark for rates is also opposed by OPA. According to the OPA, “oil and gas are not perfect substitutes for each other.” OPA points out that gas may also be used for commercial cooking or clothes drying where the competitive alternatives are electricity or propane. OPA asserts that “once a customer, particularly a small customer, has converted or installed equipment to utilize natural gas, oil is no longer a competitive option.” The OPA also does not believe that oil and natural gas prices exert competitive pressure on each other and cites a recent *Wall Street Journal* article to support its view. According to OPA, for “the past several months, natural gas prices have been substantially higher than oil prices and have avoided the continuing decline of oil prices.” Because of this, OPA does not believe a rate plan that relies on oil prices as a yardstick for gas prices should be adopted.

OPA also opposes the alternative 50/50 revenue sharing proposal put forward by BGC. The reasons for OPA opposition to the earnings sharing proposal put forth by BGC are fourfold. First, because BGC proposes to accrue operating losses in an interest bearing “earnings account,” ratepayers would have to pay the Company back its losses plus interest before receiving any earnings sharing. Second, there would only be a 50/50 sharing of earnings in excess of 15% in the earnings account. Third, the lag between when the amount to be shared is calculated and when it is put into rates is undesirably long to the OPA.[4] Finally, OPA believes the Company proposal to return the earnings sharing back to customers in proportion to the class sales volumes is “highly inequitable.”

The OPA maintains there is no need for BGC to begin construction of its system this season. OPA argues that the primary reason for the 1998 construction is to win the race to

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[4]The Company proposes that earnings calculated at year end will be shared beginning January 1st one year later.

the trench. According to the OPA, this need for speed would harm the ratepayers by extending the period over which carrying costs are calculated. This in turn would delay the period of time required for BGC's earnings account to turn positive. In response to these problems, OPA suggests that the Commission set up an annual return on equity earnings account to prevent the possibility of incurring sizable negative balances by returning over-earnings to ratepayers without recognition of under-earnings from previous years.

OPA opposes the BGC rate plan proposal because its annual indexed rate adjustments would be disruptive to customers and would either slow the recruitment of new customers or create discontent on the part of existing customers. In contrast, OPA points to the base rate stability experienced by customers of Northern Utilities over the last 16 years.

OPA warns that the gradual pattern of rate increases embedded in the BGC plan will result in customer confusion, and perhaps, anger after a number of years of regular increases. Should the Commission decide to approve the 10-year rate plan for BGC, OPA suggests that the Commission require that BGC provide every new customer written notification of how the rate plan would work, and also require BGC to fund the reconversion of systems or appliances to the original fuel within three years of taking gas service. Finally, OPA argues that guarantee of the reconversion fund should be provided to all customers prior to their fuel conversion.

OPA believes that if the Commission wishes to adopt a rate plan for BGC at this time, it should be a cost-based rate making mechanism that allows for deferral of certain costs into a regulatory account which allows deferred expenses into rates when they can be supported by greater gas sales.

C. Central Maine Power Company

CMP requests that the Commission either reject or modify the Multi-Year Rate Cap Plan proposed by Bangor Gas. CMP expresses four concerns with the Bangor's plan: (1) future rates should not be based on projections of fuel prices; (2) returns permitted by the plan seem too high; (3) the rate design flexibility permitted by the plan is too great; and (4) the plan is too restrictive of the Commission's ability to investigate and amend Bangor's rate levels.

CMP warns of the danger of establishing long-term rates based on projections of the future prices of natural gas and fuel oil. As support for this position, CMP points to Qualifying Facility (QF) contract prices that were based on 30-year projections of oil prices. In addition, CMP asserts that BGC may have even miscalculated the likely fuel oil price for the year 2000. In its projection of oil price for the year 2000, BGC has not included 1997 in its 3-year average of oil prices. Energy Information Administration (EIA) Petroleum Marketing Monthly data show a drop in the 1997 level of oil prices. According to CMP, Bangor's customers should not be required to pay above market rates because BGC has incorrectly estimated future fuel prices.

CMP argues that the Commission should reject the Plan's earnings sharing modification because BGC has failed to demonstrate that it would provide any values or efficiencies in exchange for the opportunity to earn revenues in excess of its proposed 15% allowance. In addition, CMP asserts that the Commission must determine whether BGC's proposed 15% cumulative return is appropriate in light of the protections for Bangor that are already embedded in the rate plan. Finally, CMP warns that the Commission should be mindful of the potential for "gaming" and incentives for inefficient operation contained within the Plan. When Bangor Gas's cumulative return threatens to exceed 15%, CMP says it creates an incentive to incur additional, unnecessary expenses. According to CMP, the number of true-ups and automatic escalators contained in the Plan may also contribute to inefficient operations.

CMP believes the amount of rate design flexibility afforded BGC under the plan is unprecedented in Maine. Given this level of flexibility, the plan should be carefully scrutinized. CMP argues there is no guarantee that Bangor Gas's rate design will remain consistent with Commission's goals even if the rate design is initially acceptable.

CMP's final concern with the BGC rate plan is the restrictions imposed on other parties and the Commission itself with regard to investigating and modifying the terms of the Plan. CMP takes particular issue with section 7 of the BGC Plan, which provides that the Commission may only amend the Plan if it finds an amendment is, "necessary due to a material or unforeseeable change of circumstances which renders the Rate Plan contrary to the interest of the customers of the Company or to the Company...or as otherwise provided in 35-A M.R.S.A. Section [1322]." CMP also finds fault with the provision within section 7 of the Plan that states the "plan may not be amended solely due to the Company's level of earnings (either positive or negative)." CMP excepts for two reasons: 1) Bangor Gas's terms would foreclose it (or future Commissions) from acting in a manner necessary to protect the public interest, contrary to the Commission's legislative mandate; and 2) because Bangor Gas's language is redundant with 35-A M.R.S.A. § 4706(6) of recently enacted L.D. 2094 which prohibits the Commission from changing an alternative rate plan "in a manner that prevents or threatens the utility's opportunity to recover a reasonable rate of return over the entire term of the plan." CMP argues that the Commission should reject provisions contained in section 7 of BGC's plan which exceed the requirements of the L.D. 2094.

V. ANALYSIS

A. Bangor Gas Company's Original Rate Plan

The Company originally proposed a "pure" rate cap plan in which the Company's maximum rate levels are set according to the mechanism contained in the rate plan, and the level of return on equity (ROE) earned by the Company would depend on the same factors as would affect any unregulated business, primarily level of sales and operating efficiency. Bangor Gas represents that it will absorb any risk of downside loss under this proposal. In this section we consider the elements of Bangor Gas's initial rate plan proposal.

Section B contains a discussion of Bangor Gas's alternative earnings sharing proposal.

1. Initial Rate Levels

OPA and CMP both criticize the initial rate levels proposed by BGC. OPA believes the use of oil prices for a benchmark is inappropriate because oil and gas are imperfect substitutes for one another and because the commodity price of the two fuels do not move in lock step.

We draw a different conclusion based on the considerable evidence presented by BGC regarding the competition between fuel oil and natural gas. Bangor Gas witnesses Rea, Lee, and Van Lierop testified that they expect to face vigorous competition for customers from fuel oil venders. In addition, the BGC Market Study provides clear evidence that fuel oil will be the primary competitor of natural gas as a fuel. Finally, OPA ignores the intervention of the Maine Oil Dealers Association (MODA) in this proceeding, which cited the direct competition of oil and gas fuels as one of the reasons for its interest in the proceeding.

We also do not agree that it is necessary for oil and gas prices to move in "lock step" for the two fuels to be considered competitors. Consumers do not make appliance choices based on daily, monthly, or even seasonal price differentials. Such choices are made in response to many factors which include existing prices and expectations of future prices, but which may also include such factors as convenience, overall operating costs, and product perceptions. The preponderance of the evidence in this proceeding,[5] however, is that the price of natural gas must be very close to the price of fuel oil in order for nascent LDCs to successfully capture and retain market share in Maine.

CMP also criticizes the extent to which the Bangor Gas proposal relies upon fuel price projections to set gas prices. CMP warns the Commission to be wary of establishing long term rates based on projections of future fuel prices. CMP draws a comparison to its own experience with power purchase contracts based on long term projections of fuel oil prices. However, BGC has not relied on long term oil price projections to establish its prices. They have instead chosen a near-term oil price projection (three years), and will escalate the initial price according to a self-correcting escalation formula. We find this reasonable.

We also do not believe it necessary to correct the Company’s 3-year projection to include 1997. Oil prices have fluctuated from year to year over the last decade, but have in general terms been relatively stable. Thus, a single year’s change in the price of oil does not impact the average significantly over the long term. However, due to the fact that oil prices in 1997 were substantially lower, if Bangor Gas had included 1997 in the 3-year average, the initial price cap would have been lower. We do not see that ratepayers will be substantially disadvantaged by the average that the Company has used given that it is in line with the price level of oil for an extended period of time.

As can be discerned from Table 9.8a “No. 2 Distillate Prices to Residences: Northeastern States” published in the EIA Monthly Energy Review February 1998 (attached),. the annual average price of oil for Maine calculated back to 1988 is $.877. Bangor Gas develops its initial (unescalated) price of $.859 based on the years 1994 through 1996. If Bangor Gas has set its initial rate cap level too low, it will be required to operate within that constraint. Further, if BGC has erred in estimating the initial level of its price cap by setting it too high, it will have to price sufficiently below that cap to match the price of oil in order to be able to recruit the number of customers necessary for it to succeed financially.

Despite CMP’s assertions to the contrary, we believe BGC’s 3-year average value approach provides a reasonable basis for a proxy price upon which its unique rate plan may be

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[5]This theme also pervades other natural gas service authority cases we have conducted, such as Docket Nos. 96-786 (CMP) and 96-465 (Mid-Maine).

based and that ratepayers will not be harmed by the omission of 1997 values in the calculation of the average.

2. The Inflation Adjustment

OPA disputes the necessity of Bangor Gas's proposed annual inflation adjustment based on Northern Utilities' lack of base rate increases since 1982.

Northern Utilities is an established utility with a developed service territory that has financed its gradual expansion and absorbed increases in operating costs through growth in gas sales and the depreciation of its plant. By contrast, Bangor Gas will have no well-established customer base initially, although it, too, will depend on growth in customer base for financial success.

Because any LDC in Maine will be operating under the market discipline of a well-established alternative fuel, we do not feel that that there is a great risk that Bangor Gas's proposed escalation factor will allow Bangor Gas to raise rates unreasonably over the life of the plan. If anything, Northern's rate stability and market penetration experience for residential heating suggests that Bangor Gas may not be able to escalate its prices to the extent allowed by the rate cap plan.

In addition, we do not expect that the gradually increasing indexed prices will be viewed as unacceptable by customers. The evidence shows that under both the GDP and GUPI indices, consumers have experienced average annual price escalation in both consumer goods (GDP) and natural gas prices (GUPI) of more than 2% per year for the last decade, and the rate of escalation for the prior decade was even greater. For at least 20 years, consumers have experienced gradual annual increases in the cost of all goods and services. We conclude that Bangor Gas's customers are unlikely to be surprised if their gas prices escalate at the same rate as virtually all other goods and services. Furthermore, we are not aware of anything in the natural gas industry indicating that local distribution service is likely to become a declining cost industry or to be immune from inflationary pressures on the goods and services necessary to its operation.

3. Term of the Plan

OPA argues against approval of the Company's proposed 10-year rate plan. OPA cites the Commission's decision in *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX,* Docket No. 94-123 in which NYNEX requested, and was denied, permission to operate under a rate plan for ten years. The circumstances of the two utilities once again make a valid comparison between the rate proposals problematic. NYNEX was a financially strong utility with virtually 100% market share for local exchange service in an industry experiencing declining costs as a result of technological improvements. Bangor Gas is a start-up venture in a market which is already dominated by an unregulated, competitive fuel. We are inclined to agree with Bangor Gas that a rate plan of longer than five years in this circumstance will likely be required to reach a level of financial security.

Because the time period over which the rate plan extends is extensive, we will require annual reports to monitor the Company's performance under the plan. While we will not impose a 5-year review of the plan, any party may seek or the Commission may initiate an investigation to consider modification of the plan on the basis of the information provided. See section 8 below.

4. Intergenerational Equity Issues

Because rates and the Company's realized rate of return may rise over time, OPA believes ratepayers who are customers in the later years of BGCs rate plan will unfairly subsidize those who are customers in the early years of the plan. The OPA suggests that because Bangor Gas will be allowed to charge higher rates over time due to the inflation escalator mechanism of the price cap (and possibly also due to the pricing flexibility provisions of the plan), customers in early years will pay less than customers in later years for the same service. Similarly, OPA argues that Bangor Gas's projected rates of return for the later years of its plan are unreasonably high and an indication that rate levels in the later years will also be too high.[6]

In keeping with OPA's preference for traditional, cost-of-service regulatory models, it proposes that the Commission require Bangor Gas to set rates over the term of its rate plan using an Allowance for Funds Used During Construction

[6] In this regard, OPA's argument may suggest that fairness could require that rates decline over time as customer base grows to keep the Company's earnings at a particular level.

(AFUDC) methodology. Under the traditional AFUDC methodology, an allowance for debt and equity funds used during construction, but prior to the time an asset is put in service and into rate base, is added to the actual cost of the item and depreciated (and thus recovered from ratepayers) over the life of the asset. The OPA proposes that certain fixed asset costs not go into rate base when, in fact, they are in service but not fully utilized. In effect, these assets would be considered “under construction” until enough volume is available on the system to support their recovery in rates. These assets would continue to accrue AFUDC which would be charged to ratepayers over the lives of the assets.

The problem we face, and which both the OPA and BGC proposals attempt to address, is how to compensate a start-up utility for incurring large up-front costs without creating rate shock or “product avoidance.” We disagree with OPA that Bangor Gas’s proposed rate plan structure will necessarily result in unreasonable rates for customers in later years, or that it provides a subsidy for customers in early years, raising the specter of intergenerational inequity. Moreover, the AFUDC mechanism proffered by OPA, which adds capital expenses with associated carrying costs to rates over time, creates a similar intergenerational customer effect.

Increases in the utility’s level of return will result from increased customer base as well as rate increases over the term of the plan. The rate cap will rise only at the rate of the inflation escalator. Other existing price cap plans we have approved in Maine contain similar escalators over time. When coupled with earnings sharing mechanisms, rate levels are further constrained.

To the extent that the Company earns additional profits over time as a result of adding customers, it will be in no different situation than any other regulated utility. Regulatory practice is to conduct periodic reviews to ensure that the level of revenues and costs are at an acceptable balance. The degree and manner of regulatory review of this balance has shifted in recent years in favor of “automatic” (i.e. escalated) price cap mechanisms with periodic reviews. This change in regulatory practice recognizes the value of incentive mechanisms and the reality of competitive pressures that are now facing more traditionally regulated utilities, such as natural gas, telecommunications, and electricity.

We believe the circumstances surrounding Bangor Gas’s proposal provide an adequate degree of assurance that rates will not become excessive. For instance, given the strong fuel oil business in Maine, customers will not be captive to natural gas and they will benefit from price competition between oil and gas. We expect that Bangor Gas will face pricing competition from fuel oil in the later years similar to what it will experience in the early years, in the same way that our only existing LDC, now 20 years old, continues to face competition in its efforts to penetrate the fuel market in Maine. This competition will maintain a level of price discipline on the utility. Moreover, a natural gas start-up utility faces an uphill battle to reach a level where returns match costs. While this could be accomplished by slower growth, we believe the aggressive growth strategy put forth by Bangor Gas is advantageous to customers. We do not believe that the length of the plan, when coupled with the various checks we adopt, is inconsistent with our regulatory oversight responsibilities.

Given the evidence produced in this proceeding and our experience with price cap mechanisms, we believe BGC's proposal is a reasonable alternative ratemaking proposal for smoothing the significant up-front costs of system development into rates. Furthermore, as discussed below, we retain authority to modify the plan during its term within the constraints of 35-A M.R.S.A. §4706(6), if warranted.

5. Customer Reconversions

The OPA recommends that Bangor Gas be required to fund customer reconversions of systems or appliances to the customer's original fuel within three years of taking gas service to ensure that customers will be able to change back if natural gas service proves to be uneconomical. OPA seeks to facilitate customer reconversion because the OPA believes that the competitive options will be effectively limited once a customer has converted to natural gas as a fuel due to conversion expense.

While we agree that conversion and reconversion expense is not insignificant for consumers, we disagree with OPA's position that the natural gas utility must be required to support reconversion and so reject the recommendation to establish a reconversion fund. It is clear that oil and natural gas are highly competitive commodities in Maine. In this circumstance, we are not persuaded that it is necessary or wise for us to require a utility to fund conversions away from its service as a consumer protection. We prefer to defer to customers in the choice of fuels and to the strength of the competitive market in this regard. We have not attached a similar requirement to our existing LDC in its 20 years of service in Maine; we see no compelling policy reason to place this type of requirement on Bangor Gas.

However, we accept Bangor Gas's proposal to offer no interest loans which customers could use to assist with reconversion costs. We view this proposal as a strong marketing element for the Company as it breaks into previously unserved territory.

6. Limitation on Commission's Ability to Modify the Plan

Section 7 of the Bangor Gas Rate Plan Summary

states:

> **Amendments to the Plan.** The terms of the Rate Plan may only be amended or terminated with the consent of the Company, or as ordered by the Commission on its own motion upon a finding, after notice and opportunity to be heard, that the amendment is necessary due to a material or unforeseeable change of circumstances which renders the Rate Plan contrary to the interests of the customers of the Company or to the Company, or both, or as otherwise provided in 35-A M.R.S.A. §[1322] or any successor provision. The Rate Plan may not be amended solely due to the Company's level of earnings (either positive or negative). The Commission may not amend or prematurely terminate the terms of the Rate Plan in a manner that prevents or unreasonably threatens the Company's opportunity to recover a reasonable rate of return over the entire term of the plan.

CMP and OPA argue that this language impermissibly restricts the Commission's ability to amend the Plan over its lengthy term. They also argue that these limitations, if approved, would amount to an abrogation by the Commission of its legislatively delegated duties. OPA questions whether the Commission even has the authority to issue an order that would prevent itself from revisiting the rates of a utility for 10 years because a Commission "cannot preclude a future Commission from taking actions allowed or required under its enabling statutes."

Bangor Gas argues that it requires nearly iron-clad assurance that it will be allowed a full opportunity to recoup its expected, targeted level of investment in the project as proposed under its plan. Bangor Gas hopes to ensure that a later Commission will not modify the rate plan and force rate reductions after having allowed Bangor Gas to invest substantial sums in the start-up phase while losing money or earning low returns.

We will not approve the terms contained in Paragraph 7. However, Bangor Gas is assured, under Maine law, of the opportunity to earn a reasonable return on its investment. As pointed out by CMP, under newly enacted Section 4706(6) the commission may not

> amend or terminate prematurely the terms of a multiyear rate plan in a manner that prevents or threatens the utility's opportunity to recover a reasonable rate of return over the entire term of the plan.

35-A M.R.S.A. § 4706.

Consequently, we see no need to include the same language as a provision of this rate plan.

We agree with OPA and CMP that the Commission could not abrogate its statutory duties. The limiting language proposed by the Company could be read as binding this or future Commissions because it restricts the Commission to finding that "a material and unforeseeable change of circumstances" has occurred. It also appears to limit our authority to the use of section 1322.[7] The OPA points out that this vehicle could limit the commission's ability to resolve a problem which is not temporary in nature or draw it into litigation regarding what is, or is not, subject to alteration under the authority of this section. We decline to create a term of this rate plan that may invite litigation simply to construe what occurrences meet these unique standards.

The language of the newly enacted section 4706(7) also clearly states that the Commission's authority to approve alternative ratemaking plans is in addition to the authority of the Commission granted under other provisions of Title 35-A. We see no reason to limit our authority in this regard; such an action appears contrary to the legislative intent of L.D. 2094 and Title 35-A generally.

Rather, we can provide Bangor Gas adequate assurances by making clear in this order that in approving a rate plan for Bangor Gas as modified herein, we are committed to the general precept of a term rate plan. That is, we respect the premise that a rate plan is intended by all to exist for its

[7]Entitled "Orders temporarily suspended, altered or amended", 35-A M.R.S.A. §1322.

stated term, absent clear circumstances and events which disturb the reasonableness of the plan or its effect. We are further constrained by law from amending alternative rate plan terms "in a manner that prevents or unreasonably threatens the utility's opportunity to recover a reasonable rate of return over the entire term of the plan." 35-A M.R.S.A. § 4706(6).

Because we find no compelling reason to commit to the limitations on our authority that Bangor Gas's language seems to impose -- and it is not certain that we could legally do so -- and because the statutes adequately address Bangor Gas's concern, we reject the proposed language contained in paragraph 7 of Bangor Gas Exh. 4. We retain our full authority to initiate investigations either of customer complaints or on our own motion, and make necessary changes to protect the public interest.

7. Rate Flexibility

Bangor Gas's proposed rate plan would allow the Company the flexibility to change its rates or rate elements so long as the rates charged do not exceed the maximum price cap rates proposed for reach class. Rate flexibility among elements could cause the overall rate changes of certain customers within a class to exceed the changes that would be experienced by an across-the-board change of rate elements. In the example provided by Mr. Van Lierop, for example, overall class revenues are increased by 3% through two different approaches to changes in the rate elements. In the first approach, each element experiences a 3% rate increase, while in the second approach, the customer charge is increased by 8%, and the volumetric charge is increased by only 2%. Under both approaches total class revenues are increased by the 3% rate index. The impact upon individual customers within the class however, may be quite different. In Mr. Van Lierop's example, customers with higher-than-average volumetric use would receive a smaller-than-average rate increase than customers with lower-than-average use. Using the same example provided by Mr. Van Lierop, a customer using 100 Dth would experience a 3% change in overall rates if each rate element were escalated by 3%. If, on the other hand, customer charges were to be increased by 8% while volumetric charges were to increase by 2%, a 100 Dth customer's overall increase would be approximately 3.5%. Conversely, a customer with higher volumetric consumption using 400 Dth would experience only a 1.9% increase.

We allow Bangor Gas the degree of latitude it seeks with respect to changing rate elements, but we urge Bangor Gas to exercise this flexibility cautiously. If anything, the substitutability of oil for gas space heating is greater than that of either oil or gas for electricity. It is cheaper and easier to change out a gas burner for an oil burner than it is to switch from electric baseboard heat to some form of fossil fuel heating that requires a new furnace or boiler. Therefore it is easy to imagine that too rapid changes in gas price relative to oil price could cause significant and rapid loss of revenues for Bangor Gas.

Notwithstanding the competitiveness of the heating fuel market, we are concerned that new gas consumers might think their rates are regulated in the same way as are their other utility rates. To avoid this, we require that customers be given clear notice prior to receiving service that their rates are market based rates, and are subject to change after a specified notice period.[8] In addition, prior to implementing rate design changes, Bangor Gas will be required to file such changes with the Commission. The filing should demonstrate that the changes are consistent with all representations made in the Company's filing. We will also require customer notification of changes to rate elements.[9] [10]

8. Annual Reports

As noted above, we believe that the unusual length of the plan proposed by Bangor Gas Company, along with the degree of latitude it has requested in designing rates, require annual monitoring by the Commission to assure us that Bangor Gas continues to operate in accord with the Commission's objectives for expanding gas service within the State of Maine. Bangor Gas

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[8]Section 307 requires a utility to file with the Commission changes in rate schedules 30-days in advance of implementating rate changes. Section 307 and ch. 120 of the Commission's Rules also require a utility to provide notice of general increases in rates to customers. Section 4706(5) allows the Commission to allow a utility to make rate changes on limited notice to the Commission. In its exceptions, Bangor Gas requested that the Commission determine the nature and timing of notice in a further compliance proceeding. We grant this request.

[9]Bangor Gas has proposed to offer unbundled transportation service to all customer classes. Prior to offering this service the Company must also file terms and conditions necessary for the provision of such service (e.g. scheduling balancing and settlements.)

[10]The particulars regarding notice of rate element changes will also be developed in a further compliance proceeding. See n.8.

will file annual progress reports for the prior calendar year on October 1 of every year coincident with its annual escalation factor filing. These annual progress reports shall include:[11]

- distribution facilities constructed within the past calendar year
- any correspondence with the USDOT Office of Pipeline Safety
- the total number of customers in each rate class being served
- the number of new customers in each rate class added in the most recent calendar year
- the number of customers in each rate class receiving unbundled service
- a description, including marketing materials, of all promotional programs implemented in the prior calendar year

Bangor Gas may request that the Commission provide protection to its filings as Bangor Gas believes warranted. We will not make that determination at this time.

9. Cost of Gas Adjustment

Bangor Gas's rate plan includes a cost of gas component for bundled service, "determined, and changed from time to time, in accordance with Maine law and Commission rules and regulations." During the technical conferences Bangor Gas indicated it would be willing to move to class-specific cost of gas and other structural changes as necessary to be consistent with Commission policy regarding unbundling.

On April 3, 1998, L.D. 2094 became law, putting in place new flexibility in the statutory framework for cost of gas adjustment. See 35-A M.R.S.A. §4703. We anticipate that this may be an area of ratemaking practice for natural gas distribution companies that will undergo significant change over the course of Bangor Gas's proposed rate plan. Consequently, we may wish to revisit the specifics of its cost of gas mechanism with Bangor Gas at some point in the future. At present, however, we find the Company's proposal to be workable as a starting point. Given that the status of the law has now changed from when Bangor originally filed its proposal, we invite Bangor

[11]The Commission may modify these requirements from time to time as appropriate.

Gas to present a modified proposal to incorporate class-specific cost of gas adjustments (perhaps calculated monthly with annual reporting) into its rates to facilitate competition for natural gas commodity service in preparation for the advent of interstate gas service in the Bangor area.

10. Complexity and Customer Confusion

OPA raises several criticisms of Bangor Gas's proposal regarding the degree of complexity or customer confusion that may result from the rate plan. We will address these individually in an effort to mitigate any adverse impacts on customers.

First, OPA argues that customers may be subjected to frequent and confusing rate changes. Bangor Gas's plan includes two seasonal cost of gas rate adjustments (summer and winter period), as well as its rate cap escalation each January. In addition, the plan allows Bangor Gas unlimited rate design flexibility for rate elements so long as rates within the class on average do not exceed the cap. This means consumers could see many rate changes within the course of the year.

While Bangor Gas's proposal does not limit the number of discrete rate changes that it may impose in any given period of time, our notification requirements will make these changes apparent to customers 30-days in advance of their implementation. We expect that the Company will have adequate incentives as a result of customer reaction and competitive pressures to keep rate changes to a minimum. It will be in the Company's interest to do so to maintain load and a positive image in the community in which it seeks to serve.

In addition, we will require the Company to make it clear when signing up new customers that the Company will be entitled to make unilateral rate changes at the Company's discretion on limited notice and minimal review by the Commission.[12] We also require that this message be repeated annually in the notice of any rate cap escalation to ensure that customers remain aware of this term of service.

Next, OPA argues that Bangor Gas's sharing proposal, wherein it will return a share of revenues in excess of 15% to ratepayers one year after the excess earnings have accrued, is an unacceptable amount of delay to the advantage of the Company and the disadvantage of ratepayers. We agree that the Company's sharing proposal unnecessarily delays the return of excess revenues to ratepayers. As explained in the next section,

[12]Bangor Gas should submit its proposed customer notice for review with its proposed terms and conditions and rate schedules.

we propose an accelerated schedule to coordinate with the Spring CGA.

Finally, OPA charges that Bangor Gas may price its rate elements in such a way as to obscure the true cost of gas, thereby discouraging unwitting customers from making the otherwise economic decision to change to an alternative fuel or competitive gas provider. We will require Bangor Gas to list its cost of gas separately from other charges so that customers will be able to assess meaningfully their competitive options.

B. Earnings Sharing Proposal

1. Overview

The earnings sharing proposal put forth by BGC was an attempt to address some of the concerns about the potential for the Company to earn unreasonably high returns raised during this proceeding. The Company originally proposed that a “pure” rate cap plan be established in which the Company’s maximum rate levels are set according to the mechanism contained in the rate plan, and that the level of return on equity (ROE) earned by the Company would not be examined by the Commission, but instead would depend on the same factors that affect any unregulated business, mainly level of sales and operating efficiency. As an alternative, the Company proposed that an earnings trigger of 15% return on equity be established, so that earnings below that level are debited to the account and earnings in excess of 15% are credited to the account, with interest calculated on the balance. If the cumulative level of the earnings account exceeds 15%, half of the difference would be returned to ratepayers as an adjustment to the Company’s rate caps.

The details of the earnings account mechanism are not described with complete specificity in the record. Apparently, the account would be calculated on a financial statement basis, as opposed to a rate base/regulatory capital structure mechanism. It is also not entirely clear what rate would be used to accrue interest; the possibilities range from a short-term interest rate to an overall cost of capital, either pre- or post- income taxes, or something in between. In any event, accruing of interest would mean that the results of the early years (when losses are expected) would be weighed more heavily than the results of the later years during the proposed plan period.

2. Competitive Pressure

The decision on whether to accept the Company's original proposal, i.e., one without earnings sharing, or BGC's 15% cap alternate, or some other version of the rate plan, depends to a large degree on an assessment of the competitive nature of this industry. If effective competition is found to exist, it will act as a damper on "excess" profits, and the Company's original proposal would be reasonable because customers will be receiving good service at reasonable rates (as compared to the alternative of oil) and will retain the option of switching to an alternative fuel without incurring unreasonable costs. The well known "invisible hand of competition" will prevent the gas utility from earning monopolistic profits. In effect, the marketplace and the Company's abilities to attract and retain customers will determine the level of the Company's profitability. Under this scenario, nominally high profit levels in later years are not a signal that regulatory intervention is needed, merely that the Company is operating effectively in a competitive market.

While the evidence would support such a finding, we are not fully persuaded that competition between gas and oil will restrain the Company's ability to earn excess profits in all circumstances. That is not to say that competition will not exist or that it will not be effective. We simply do not have enough information or any track record on which to base such a conclusion. To accommodate that uncertainty, an earnings sharing mechanism is one method of providing some protection for ratepayers against levels of profit achieved through monopoly behavior rather than skill, foresight and energy from the excess earnings. In that situation, it is necessary to examine the details of BGC's proposed earnings cap.

3. Return on Equity

First, we examine the 15% return on equity (ROE) trigger proposed by the Company. The Company justified its 15% trigger ROE on the basis of a decision by the North Carolina PUC in a similar LDC start-up situation. The Company's projections over the 10-year period indicate that BGC believes it can earn a return that is commensurate with the risk of this undertaking. The Company believes that its proposed 15% ROE over the 10-year initial rate plan period is a reasonable trigger given the level of risk present in a start-up operation.

If we were setting an allowed return for a rate base regulated utility, 15% might be excessive. In this instance, however, we are not in the traditional realm of rate of return regulation for BGC because this is a start-up operation, and we have the statutory authority to use an alternative form of regulation for the Company. While we do not have an ROE analysis for BGC in the record, we can get a general sense of allowed returns on equity for established utilities under traditional rate of return regulation from a review of recent cases. For instance, in the most recent Bangor Hydro-Electric (BHE) rate case (Docket No. 97-116) we found an allowed ROE of 12.75% to be appropriate for that electric company which will continue to provide bundled electric service until March, 2000, and recently has experienced severe financial difficulties. We also note that the current indexed ROE for Central Maine Power (CMP) Company under its ARP mechanism is 10.55%. More than 10 years ago, in Docket No. 87-164, the Commission allowed Northern Utilities, Inc., Maine’s only natural gas LDC, a ROR of 9.93%, including an overall ROE of 11.72%.[13] Because BGC will be competing for customers as a start-up utility, it might be reasonable to conclude that it should have a allowed ROE in excess of the rate for an established utility. These cases present a ROE range of 10.55% to 12.75%.

As previously stated, we are not dealing with an established utility that is operating under rate of return regulation. Rather, as new company in a competitive environment BGC is quite likely to be found to have somewhat more business risk than these three utilities. However, the question at hand is not what the allowed ROE for Bangor Gas should be; it is at what point should the Commission intervene or limit the Company’s returns. To some extent, a relationship between the two exists. However, without determining specifically what ROE we would allow Bangor Gas at this time, we conclude that 15% is appropriate makes sense for the purpose of providing a reasonable restriction on the level of returns, as explained below.

First, in order to determine if 15% is a reasonable trigger for a long-term rate plan, we look to the aforementioned ARP currently in place for CMP. It contains an earnings sharing provision with a 350-basis-point bandwidth around the indexed ROE. Using the upper end of the previously discussed ROE range plus a 350 basis point band would result in an upper ROE boundary at about 16%. In the instant case we are asked to approve a one-sided earnings sharing that contains only an upper bandwidth, but with any earnings below that level used as an offset for earnings above the trigger. Sharing on a 50/50 basis occurs only if the cumulative amount in the account is positive.

Given that BGC will be a company without an initial customer base and will be facing continuous competitive pressures, we find that a 15% ROE trigger for earnings sharing

[13] We would use more recent determinations to guide us in establishing new ROEs for regulated utilities.

purposes in the context of a long-term rate plan is reasonable. While the precise degree of competition cannot be ascertained at present, it is clear that BGC should be allowed a return that recognizes the competitive nature of its industry, and the length of time necessary for the Company to establish itself as a viable and profitable operation. Consequently, we will accept the 15% ROE trigger proposed by the Company.

4. Profit Sharing Incentives

CMP argued that the Company would have the incentive to spend money inefficiently in order to avoid reaching the earnings cap. Because the Company's plan shares overearnings on a 50/50 basis, however that supposed incentive to overspend is minimized, if not eliminated. The Company would certainly appear to have the incentive to continue to increase its earnings above the 15% cumulative ROE level, since it retains half of the surplus for shareholders if earnings sharing were to occur. Conversely, wastefully spending any amount to avoid reaching the 15% trigger, equates to spending 100% shareholder value, assuming the expense is not somehow attributable to operation or capital costs that are later recoverable. We are not persuaded that the Company has an incentive to spend excessively in order to avoid earnings sharing.

5. Interest on Earnings Account

Finally, we address the question of whether interest should be accrued on the earnings account, and if so, what rate to apply. The Company did not explain the logic of or the need for interest on the account balance other than to state it reflects the time value of money. Providing an interest component causes the anticipated losses or underearnings in the early years to be worth more to the Company than potential overearnings occurring in later years. The problem with this approach is that the earnings account does not consist of a "pool" of cash, nor is it an amount that requires financing on the part of the Company. It is not an expense. Rather, it is a calculation of the cumulative returns earned by BGC in relation to the established trigger of 15%. Its purpose is to compensate ratepayers should the Company be able to earn "excess" profits over the term of the rate plan. Moreover, the Company is already benefiting from being allowed a 15% upper bound. The earnings sharing provision acts as a safeguard against BGC being able to extract exorbitant monopoly-type profits from ratepayers; we will not allow interest to be calculated on the balance of the earnings account.[14]

[14] Not allowing interest on the earnings sharing account also provides an additional incentive to Bangor Gas to build its customer base early

6. Sharing Mechanism

To address the lengthy delay between the date the Company assesses excess earnings and the date it returns the ratepayers' share, we will require the utility to provide its anticipated earnings at the time of its spring CGA filing, using a mix of actual, preliminary and estimated monthly revenue figures. The Company may then "true-up" its earnings report by April 1st and any excess earnings will be allowed against rates coincident with the implementation of the summer CGA on May 1. This plan reduces the delay in the return of excess revenues to customer from 12 months to five months.

Another detail of the earnings account mechanism is how any excess due to ratepayers would be applied. BGC has proposed that the 50% share that is owed to ratepayers be applied to the price caps. While no party expressed opposition to the Company's proposal, we believe it would not accomplish its stated purpose, and therefore, should be modified. While applying the excess to the rate caps would affect the maximum price that the Company could charge, it would not necessarily result in a direct benefit to ratepayers, since the Company's actual prices may be below the cap when the earnings sharing takes place. In that case customers would only see an indirect benefit, and if actual rates remained below the cap, ratepayers would see no actual effect on their rates.

We find it more appropriate that ratepayers receive a direct benefit of any overearnings accrued by the Company, because it is ratepayers who over the pendency of the Plan will have paid the rates which gave rise to the overearnings. Therefore, if excess earnings arise in the sharing account, the amount due to customers will be passed backed directly through either a credit or a reduction in rates. We will not mandate any specific treatment at this time, but, should an excess earnings situation occur, we will require a compliance filing by the Company that meets the general principle of equitably reducing the actual rates paid by customers.[15]

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[15]In light of the flexibility given Bangor Gas to raise prices under the cap, we would require that any proposal to reflect reductions due to sharing show that customers actually receive the full benefit of the shared amount.

VI. CONCLUSION

For the foregoing reasons, we

O R D E R

1. That Bangor Gas Company L.L.C.'s proposed earnings sharing rate plan proposal is approved as modified herein;

2. That Bangor Gas Company L.L.C. shall file proposed terms and conditions of service and rate schedules for compliance review and approval six months prior to the in-service date; and

3. That the Commission will determine the necessary notice requirements for Bangor Gas Company L.L.C. to implement rate changes in a compliance proceeding.

Dated at Augusta, Maine this 26th day of June, 1998.

BY ORDER OF THE COMMISSION

____
Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT

COMMISSIONER HUNT DID NOT PARTICIPATE IN THIS DECISION

This document has been designated for publication.

APPENDIX A: Procedural History

On October 29, 1997, Bangor Gas Company, L.L.C. (Bangor Gas), pursuant to 35-A M.R.S.A. 2104, filed a petition for approval to provide natural gas distribution service in the greater Bangor area, including the municipalities of Bangor, Brewer, Old Town, Orono, and Veazie. Bangor Gas is organized as a limited liability company formed pursuant to an agreement between Bangor Hydro-Electric Company (BHE) and Bangor Pacific, a subsidiary of Pacific Enterprises, a California corporation engaged in the provision of electric and natural gas service nationwide.[16] The application establishes that Bangor Gas was formed for the purpose of designing, engineering, financing, constructing, testing, managing, marketing, and operating a local natural gas distribution company.

Bangor Gas's filing contained the testimonies of Andrew Rea, Vice President of Energy Pacific; Frederick S. Samp, Vice-President - Finance and Law, BHE; Carroll R. Lee, Senior Vice President and Chief Operating Officer, BHE; Johannes Van Lierop, Director of Governmental and PUC Regulatory Affairs for Southern California Gas Company (SoCalGas); and David G. Schiller, Technical Operations Manager for Energy Pacific, a joint venture between SoCalGas and Enova (parent company of San Diego Gas and Electric).

The filing was made in both redacted and unredacted form as it contained Designated Confidential Information subject to Temporary Protective Order No. 1, issued October 28, 1997. Under the terms of the protective order, confidential information would be distributed only to the Commission and the OPA's staffs and consultants in order to avoid allowing competitors access to sensitive and proprietary plans or information. No party challenged the terms of this order. By procedural order issued February 27, 1998, the terms of Protective Order No. 1 were modified to include certain financing documents.

The Hearing Examiner issued a Notice of Proceeding and Prehearing Conference on November 21, 1997 and published notice

[16]In the same filing, Bangor Hydro-Electric Company filed its request for approval pursuant to 35-A M.R.S.A. 707 and 708 to be allowed to enter into an agreement with Bangor Pacific to form, invest in, and operate a subsidiary to provide local distribution natural gas service. The Commission assigned that case Docket No. 97-796. The Examiners denied the applicants' requests for consolidation by procedural order dated November 18, 1997. The Commission approved the proposed agreement subject to condition in its Order Approving Revised Stipulation dated March 26, 1998.

in newspapers of general circulation. The Office of the Public Advocate, BHE, Northern Utilities, Inc. (Northern), Mid-Maine Gas Utilities, Inc. (MMGU), Central Maine Power Company (CMP), Maritimes & Northeast Pipeline, L.L.C. (MNE), and the Maine Oil Dealers Association (MODA) filed timely petitions to intervene. The Examiner granted all interventions at the prehearing conference on December 9, 1997.[17] On January 2, 1998, and clarified on January 12th, the Examiner issued a Prehearing Conference Report and Procedural Order adopting an initial schedule for this proceeding and reporting on scope.

Technical conferences for purpose of oral discovery were held on January 26th and February 25th, 1998.

On February 11, 1998, Bangor Gas filed a Motion for Partial Summary Judgment and to Strike or Exclude Portions of the Testimony of Scott Rubin on Behalf of the Public Advocate and Incorporated Memorandum, along with its Statement of Material Facts Not in Dispute. In addition, Bangor Gas filed a proposed stipulation among itself, BHE and MNE. Both of these filings sought to have the Commission award Bangor Gas an unconditional certificate to serve, reserving only rate plan issues for the remainder of the proceeding. Bangor Gas later filed sworn affidavits of its witnesses placing under oath the testimony, exhibits, data responses, and testimony at discovery conferences, for use in support of its motion for summary judgment.

The OPA filed the prefiled direct testimony of its consultant, Scott J. Rubin, on February 3, 1998.

On February 13, 1998, the OPA filed a Motion for Expedited Comparative Certificate Proceeding requesting that the Commission require Mid-Maine Gas Utilities, Inc. (MMGU) -- the entity holding a certificate of unconditional authority to serve in the greater Bangor area -- and CMP Natural Gas to file proposals for consideration together with the Bangor Gas proposal. On February 19, 1998, the OPA filed an amended motion suggesting longer timeframe for the comparative proceeding.

CMP, Northern, and OPA filed comments regarding both motions on February 23, 1998. Bangor Gas, CMP, Northern, OPA, BHE and MNE filed further comments on March 5, 1998. An Examiners Report on both pending motions was issued on March 9, 1998. CMP and OPA filed exceptions to, Northern filed comments on, and Bangor Gas filed a letter in support of the Examiners Report.

On March 17, 1998, Bangor Gas submitted an earnings sharing proposal as an alternative to its original rate plan proposal. A

[17] MMGU and MODA did not attend the prehearing conference and did not actively participate in the proceeding.

hearing was held on March 18, 1998 on issues regarding Bangor Gas’s rate plan proposals; Bangor Gas explained its alternative earnings sharing proposal. In addition, CMP conducted cross-examination on issues relating to Bangor Gas’s fitness to receive service authority (i.e. non-rate plan issues).

On March 27, 1998, CMP filed a brief on the certificate (non-rate plan) issues that were explored in the hearing. Bangor Gas filed its reply brief on non-rate plan issues on April 1, 1998. Rate plan briefs and reply briefs were filed on April 1st and 10th, respectively, by OPA, CMP and Bangor Gas.

The Commission held Oral Argument on the motions on April 2, 1998 and subsequently requested further comment from parties on issues raised by Northern regarding service territory boundaries and finding need in areas with differing degrees of service and service authority.[18] Bangor Gas, CMP, OPA, MNE and Northern filed further comments on these issues on April 17th and 21st.

The Commission held deliberations on April 28, 1998 on the OPA’s Amended Motion for Comparative Proceeding and on May 18, 1998 regarding the certificate issues and proposed rate plan.

An Examiners’ Report on the rate plan was issued May 5, 1998. Exceptions were filed by CMP, OPA, and Bangor Gas. Deliberations were held on May 18, 1998.

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[18] Northern had also raised these issues in its Motion for Reconsideration of Award of Conditional Authority in <u>Central Maine Power Company, Petition for Approval to Furnish Gas Service in and to Areas Not Currently Receiving Natural Gas Service</u>, Docket No. 96-786.